IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6443 of 2001

WITH

SPECIAL CIVIL APPLICATION No 6445 of 2001

WITH

SPECIAL CIVIL APPLICATION NO 6446 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

MORARJI DESAI TEXTILE LABOUR CO. OP. INDUSTRIES LTD.

Versus

THAKOREBHAI DHULABHAI PATEL

Appearance:

1. In all matters :

MR AK CLERK for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/07/2002

CAV COMMON JUDGEMENT

1. All the three petitions involve common question of fact as well as law and hence they are being disposed of by this common judgment.

2. Navsari Cotton and Silk Mills Ltd. (hereinafter referred to as 'the Company') - petitioner of Special Civil Application No. 6445 of 2001 was incorporated under the provisions of the Indian Companies Act in the year 1936. It had the composite textile unit at Navsari having 33,536 spindles and processing capacity of 5,000 meters per day. Some time before the year 1990 the Company faced financial difficulties and ultimately it became sick industrial company within the meaning of section 3 (o) of the Act. A reference was made to the Board for Industrial and Financial Reconstruction (for short 'BIFR') under the provisions of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act'). A scheme came to be prepared whereby modernization of the plant and machinery with an estimated cost of Rs.113 lacs was envisaged. Though the scheme was expected to be completed in the month of March 1992, it got delayed by four years. During that period the financial condition of the Company further deteriorated and the working thereof became unviable. It stopped its operations in July 1994 and had remained closed till the time new scheme came to be prepared and implemented. The reason for the Company's debacle was the increase in the cost of raw materials, lack of cost control by the erstwhile management and the unviable operations of the weaving and processing sections. The accumulated losses of the Company as on 31st March, 1995 had mounted upto Rs.1358 lacs.

2.1. Since the earlier sanctioned scheme failed, the BIFR again directed the operating agency, namely the Industrial Development Bank of India (IDBI) to advertise seeking offers for take over/merger and to procure promoters for that purpose and also to explore the possibility of securing financial aid from the financial institutions. In response to the said advertisement Shri Morarji Desai Textile Labour Cooperative Industries Ltd. (for short 'SMDT') - the petitioner of Special Civil Application No. 6443 of 2001, proposed a scheme. It is a cooperative formed for the revival of the Company and

to implement the scheme for the same. The said cooperative is formed by Majoor Mahajan Mandal, Navsari i.e. the petitioner of Special Civil Application No. 6446 of 2001 under the provisions of the Gujarat cooperative Societies Act. The property belonging to Majoor Mahajan Mandal has been mortgaged to GSFC for the purpose of obtaining loan of Rs.50 lacs for depositing the equity share capital of Rs.1.00 crore before the IDBI under the scheme. At present the Company has been revived under the scheme sanctioned by the BIFR and the said scheme is under operation and implementation. The IDBI is the operating agency and the BIFR is periodically monitoring and reviewing the working of the scheme.

2.2. The respondent joined the service of the Company on 1st August, 1959 as Office Clerk and his service came to be terminated by passing order of dismissal by the Company on 27th June, 1982. This was done pursuant to an incident of theft in which the respondent was involved. He was, therefore, issued with a charge-sheet dated 2nd June, 1982 and having found him guilty the Company took the aforesaid action.

2.3. Being aggrieved by the order of dismissal from the service the respondent approached the Labour Court, Navsari by filing T. Application No. 449/1983. Initially the said proceedings were filed against the company alone. However, later on when the SMDT took over the Company under the scheme, it was joined as opposite party in the said T Application. It may be noted here that during the pendency of these proceedings the respondent, upon reaching the age of superannuation on 8th July, 1991 had retired from service.

2.4. The Labour Court vide award dated 23rd July, 1999 directed the SMDT to pay full back wages to the respondent from the date of dismissal till the date of the respondent reaching age of superannuation i.e. for the period between 26th June, 1982 and 8th July, 1991 and also to pay all other monetary benefits to which the respondent was entitled to. Though SMDT was served with the notice as stated above, it had not remained present before the Labour Court and the award was passed against it ex-parte.

2.5. To challenge the aforesaid award of Labour Court, Navsari, three appeals came to be filed. Appeal (IC) No. 6 of 1999 was filed by the Company, Appeal No. (IC) No. 7 of 1999 was filed by the SMDT and Appeal (IC) No. 8 of 1999 was filed by the Majoor Mahajan Mandal. These appeals came to be filed in the Industrial Court at

Surat. In the appeals before the Industrial Court it was vehemently contended by the SMDT that since the entire matter was pending before the BIFR, the proceedings initially before the Labour Court and subsequently before the Industrial Court could not have been continued in light of the bar imposed on such proceedings by virtue of provisions of section 22 of the Act. Moreover, it was contended that since the SMDT had taken over the Company under the scheme sanctioned by the BIFR, it was not responsible to pay the dues of the respondent, which essentially pertained to period prior to its taking over the Company. The Industrial Court, however, did not accept these contentions on the ground that since SMDT had taken over the Company, it was liable to make the payment to the respondent and hence by order dated 30th June, 2001 dismissed the appeals. Hence, these petitions.

3. Mr. A.K. Clerk, the learned counsel for the petitioners in all the aforesaid petitions submitted that despite the fact that it was brought to the notice of the Industrial court the pendency of the proceedings before the BIFR, it had upheld the award passed by the Labour Court and had dismissed the appeals. He further submitted that the scheme framed under the provisions of the Act and in particular provisions of section 18 (8) of the Act it was bidning to the employees of the said Company including the retired employees. He further submitted that in the scheme no provision has been made to take care of the financial liability of the erstwhile company i.e. in the form of back wages, etc. of the workmen of the erstwhile company for the period prior to taking over the Company by the SMDT and, therefore, SMDT under the present scheme was not liable to satisfy such dues.

3.1. Mr. Clerk also submitted that since the respondent had not approached the BIFR and had not obtained its permission to prosecute the proceedings before the Labour Court, the award passed by the Labour Court was bad in the eye of law in view of the provisions of section 22 of the Act. According to Mr. Clerk, since the respondent has already reached the age of superannuation, there was no question of reinstatement in the service and the entire proceedings therefore assumed colour of a money suit.

3.2. As against that, Mr. K.R. Koshty, learned counsel for the respondent submitted that there is delay in filing these petitions and on that sole ground the same are required to be dismissed. He further submitted

that the petitioner - SMDT, in view of the ex-parte award having been passed against it by the Labour Court, had submitted an application for restoration of the proceedings before the Labour Court and to rehear the same and that was rejected and against the order of rejection no steps have been taken by the petitioner. Therefore, these petitions cannot be entertained. He further submitted that the provisions of the Act are not applicable in the present case because the SMDT has taken over possession of the Company and SMDT is not declared as sick industrial company under the Act. Lastly he submitted that the protection given to the sick industrial company under section 22 of the Act is valid only upto maximum seven years by virtue of proviso to sub-section (3) of section 22 of the Act and, therefore, the immunity granted by the Act to SMDT has already come to an end and the petitioner cannot take shelter under the same.

3.3. Both the learned counsels in support of their submissions have referred to several decisions, which I will discuss during the course of this judgment.

4. First of all it will be necessary to reproduce certain relevant provisions of the Act here. The Act defines "sick industrial company" in clause (o) of section 3, which reads as under :-

> "(o) 'sick industrial company' means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth."

4.1. Section 16 of the Act gives power to BIFR to make inquiry into the working of sick industrial company upon receiving a reference under section 15 of the Act or upon receiving the information from other source. The said section also confers certain powers on the BIFR which may facilitate its functioning under the Act. Section 18 deals with preparation and sanction of the scheme. The provision which has been relied on by Mr. Clerk in support of his submission can be reproduced as follows:-

> "18. PREPARATION AND SANCTION OF SCHEMES.- (1) Where an order is made under sub-section (3) of Sec. 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with

respect to such company providing for any one or more of the following measures, namely -

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(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on shareholders, creditors and guarantors and employees of the companies,"

4.2. The most relevant provision for the purpose of these petitions is of section 22 of the Act, which deals with suspension of legal proceedings, contracts, etc., which reads as under :-

"22. SUSPENSION OF LEGAL PROCEEDINGS, CONTRACTS, ETC.- (1) Where in respect of an industrial company an inquiry under Sec. 16 is pending or any scheme referred to under Sec. 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Sec. 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) Where the management of the sick industrial company is taken over or changes, [in pursuance of any scheme sanctioned under Sec. 18] notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association

of such company or any instrument having effect under the said Act or other law-

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) [Where an inquiry under Sec. 16 is pending or any scheme referred to in Sec. 17 is under preparation or during the period] of consideration of any scheme under Sec. 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board :

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a Court, Tribunal, officer or other authority or of any submission, settlement or standing order and accordingly.-

(a) any remedy for the enforcement of any

right, privilege, obligation and liability suspended or modified by such declaration and all proceedings relating thereto pending before any Court, Tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings become stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

5. The aforesaid provisions of the Act envisage framing of scheme in respect of revival of a sick industrial company, implementation thereof. To make the scheme viable and its functioning smooth, imposition of certain restrictions and prohibitions on certain matters is also provided for in the Act. The record of the petitions shows that the respondent's service came to be terminated with effect from 27th June, 1982 and he reached the age of superannuation on 8th July, 1991 and the award of the Labour Court came to be passed on 23rd July, 1999. The SMDT took over the Company under the scheme on 5th December, 1996 i.e. the day on which the scheme proposed by the Majoor Mahajan Mandal came to be sanctioned by the BIFR. Considering the aforesaid facts it becomes crystal clear that after the respondent reached the age of superannuation the question of actual reinstatement in the employment did not survive except for the purposeof determining the amount of back wages that may be found payable to the respondent and the proceedings before the Labour Court assumed the colour of simple money suit. If that be so, unless and until the respondent had approached the BIFR and had obtained its permission to prosecute the said proceedings, it was

incumbent upon the Labour Court to stay the same. This ofcourse did not happen and obviously so because before the Labour Court the SMDT did not appear despite service of notice and did not bring this fact to the notice of the Labour Court. However, the same cannot be said with regard to the Industrial Court wherein appeals came to be filed. Before the Industrial Court, all the submissions noted above were made on behalf of the petitioners including the submission based on the provisions of section 22 with regard to suspension of legal proceedings, etc. and it was submitted that the award of the Labour Court was required to be set aside because the entire proceedings had become void on the sole ground of respondent not taking appropriate permission of the BIFR. Considering the provisions of section 22, it is clear that when the scheme is framed and sanctioned and it is being implemented, no proceedings as mentioned in sub-section (1) of section 22 of the Act can go on against the sick industrial company unless the requisite consent has been obtained of the BIFR or if the matter is in appeal before the Appellate Authority, of the said authority. Moreover, sub-section (3) of section 22 of the Act also provides that operation of settlements, agreements, awards, etc. in which the sick industrial company is a party, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the date of order shall also remain suspended. In light of the aforesaid provisions, when the matter was pending before the BIFR under the provisions of the Act, the proceedings before the Labour Court could not have gone on. Here, however, it can be presumed that Labour Court did not have any such information with it and, therefore, it continued with the proceedings even after the year 1990, even when the Company was declared as sick industrial company and scheme came to be framed for revival of the same. It, however, certainly adversely affects the validity of such proceedings, since the respondent had not obtained requisite consent of the BIFR as envisaged under sub-section (1) of section 22 of the Act.

6. Mr. Clerk has relied on the decision of this Court rendered on 26th October, 1999 in the case of Dakshin Gujarat General Labour Association v/s. State of Gujarat in Special Civil Application No. 8351 of 1999 wherein recovery sought to be effected of the dues of the workmen, this Court has said that when the company is declared to be a sick industrial company under the provisions of the Act and scheme for its rehabilitation is in progress, such relief cannot be granted dehors the

provisions of the scheme and the Act and the conditions of its implementation. While dismissing the petition summarily, the learned Single Judge has observed as under:-

> "2. ..... Therefore, the petitioner in order to claim any relief must approach the BIFR for seeking appropriate directions in respect of grievance made by him in this petition, but no mandamus can be issued so as to override the provisions of the Act of 1985."

This decision came to be challenged in Letters Patent Appeal No. 1603 of 1999. Before the Division Bench it was mentioned on behalf of the appellant/petitioner of that case that necessary application for obtaining consent of the BIFR was already filed before it, but it was not decided. In light of that statement, the Division Bench issued following directions :-

> "In the facts and circumstances, the only direction which can be issued is that if application/s is/are pending before the Board, the Board will decide them as expeditiously as possible preferably within one month from receipt of the writ. If no such application/s is/are filed, same may be filed. After receiving such applications, the Board will pass appropriate order within four weeks from receipt thereof. LPA accordingly stands disposed of. Notice discharged."

6.1. Mr. Clerk also relied on the decision of this Court rendered in the case of F.A. Potnis v/s. National Textile Corporation (Gujarat) Ltd. reported in 2001 Vol.3 C.L.R. at page 508, which deals with section 22 of the Act. In the said decision this Court has, after referring to several decisions of the Apex Court and the High Courts, held as under :-

> "27. I have considered the entire legal position as contended by the learned counsel for the parties. The Division Bench of this Court has decided 12 L.P.As. (a group of L.P.As.) by common judgment and in the order dated 27/5/2000 in the case of Abad Dairy (supra) after considering the legal position in the several decisions of the Supreme Court and this Court and settled legal proposition that the reliefs of regularisation and back wages claimed by the

workmen in those petitions should have been refused. The word "back wages" includes employment and hence on the basis of the decision of the Division Bench of this Court, the petitioner cannot be allowed to raise this question unless the BIFR has permitted. In the present case, the company is declared as sick and in view of the legal position discussed above, the wages include increments as claimed by the petitioner cannot be allowed unless the BIFR has permitted the petitioner to raise the same."

6.2. In the case of Abad Dairy v/s. Manjibhai Dhanjibhai reported in 2000 (3) GLH 409 the Division Bench of this Court has held as under :-

"We find that learned Judge has failed to consider several important legal and factual aspects including as substitutes. The Unit has been declared "sick" and is now under the Board for Industrial and Financial Reconstruction. It is now governed by the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Because of steep fall in its business, there is no sufficient work with the employer, the Unit is under the grinding financial strain and unable to sustain the burden of employment of large number of Badli workers as regular employees hence wages and monetary benefits from retrospective dates could not have been awarded in their favour. These circumstances, in our considered opinion are very much relevant for which the relief of regularisation and back wages claimed by the workmen in these petitions, should have been refused.

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No employer whose unit has been declared sick and is under the Board for Industrial and Financial Reconstruction can be directed to regularise substitute or casual and pay them back wages."

Similar view has been also taken by the Punjab and Haryana High Court in the case of Cement Corporation of India v. Presiding Officer, C.G.I.T. reported in 2002 LAB.I.C. at page 382.

The Apex Court has in the decision rendered in the case of N.T.C. (IDA) Empl. Association v. Union of India reported in 1998 LAB. I.C. p. 2766 observed as follows:-

"3. It is not disputed that the concerned subsidiaries of National textile Corporation where the petitioners are working are sick units and they are before the Board for Industrial and Financial Reconstruction functioning under theprovisions of Sick Industrial Companies (Special Provisions) Act, 1985. Learned Additional Solicitor General Mr. Reddy stated that whatever benefits are available under the aforesaid O.M. can be made available to them. However, because of the aforesaid Clause 13 at present the said relief cannot be granted to them as the revival package question is pending before the B.I.F.R. When this was pointed out to learned Senior Counsel for the petitioner-association he requested us to adjourn these cases for some time to enable the employees concerned to approach the B.I.F.R. for getting appropriate clearance in this connection. He vehemently contended that despite the concerned subsidiaties where there employees are working are sick units, and as such they are before the B.F.I.R. at least 90 per cent of their own employees who are covered by the C.D.A. pattern have been given the benefits of pay hike from time to time along with further hike in the light of the recommendations of the 4th and 5th Central Pay Commissions and only for these employees represented by petitioner-association such reliefs are not granted and therefore, according to him, they are being discriminated against. In our view, all these disputes may not survive if the petitioner-association makes appropriate application before B.I.F.R. for getting clearance in connection with the implementation of the benefits flowing from the said O.M. dated 19/7/1995, as admittedly such benefits are available to them but will have to be cleared by the B.I.F.R. for being actually implemented and made available to them. We also make it clear that apart from the employees represented by the petitioner-association in this SLP and those of the employees referred to in the I.As. for intervention, any other similarly situated employees who might have approached various High Courts where their writ petitions are pending and who are similarly circumscribed, may also approach B.I.F.R. for ventilating their grievances. All such applications will obviously be considered by the B.I.F.R. if the employees

concerned approach for getting clearance from the B.I.F.R. This SLP will therefore, stand adjourned at present. In the meantime, the petitioner-association and other employees concerned, if so advised, may file appropriate applications before the B.I.F.R. We have not the least doubt that the B.I.F.R. will consider their grievances which are pending since long and will do the needful in the matter after hearing the parties concerned."

7. In view of the ratio laid down in the aforesaid cases, it is clear that where there is monetary implication involved in the proceedings or any other proceedings of such nature, they cannot be prosecuted unless necessary consent as required under sub-section (1) of section 22 of the Act is obtained. Prosecution of such proceedings without requisite consent from the BIFR ceases to have any legal effect.

8. This takes me to the second question whether the SMDT is liable to satisfy the award passed in favour of the respondent. The answer to the same is in negative. Firstly because the financial liability has come to be determined of the Company on account of dismissal of the respondent in the proceedings which, for the reasons stated above, were not valid. In the proceedings which have become invalid in the eye of law on account of want of requisite consent u/S. 22 (1) of the Act, the findings arrived at in such proceedings also become illegal and hence ineffective. The second ground is that assuming the financial liability has arisen of the Company qua the respondent, such liability cannot be got discharged from it, the Company already having been declared as a sick industrial undertaking. For claiming his back wages, the respondent has to approach the BIFR first and in absence thereof, the same cannot be paid to him, as it has been laid down in aforesaid decisions. Moreover, with advent of SMDT, the Company has lost its existence. So far the Courts below are concerned, the entire responsibility to satisfy the award has been thrown on the SMDT, which has taken over the Company under the scheme framed before the BIFR and sanctioned by it which is still under implementation and it is being supervised by the BIFR periodically. No provision with regard to the dues like the one in dispute in the present petitions has been made in the said scheme. These dues pertain to the period prior to the SMDT having taken over the Company in the year 1996. In view thereof, the same cannot be the liability of the SMDT and the Industrial Court was totally in error in saddling the SMDT with the

same on the ground that the Company has been taken over by the SMDT. This is no ground for calling upon the SMDT to pay the dues of the workman i.e. respondent which pertain to period between the year 1982 and 1991 during which the SMDT was not at all in picture and it had come into picture only by virtue of its sponsoring scheme under the Act and by virtue of the BIFR sanctioning the said scheme vide order dated 5th December, 1996.

8.1. In light of these observations the submission of Mr. Koshty that since the SMDT has not been declared as sick industrial company under the Act, these provisions do not apply to it, has no meaning at all. SMDT has taken over the Company under the provisions of the Act and it is implementing the scheme under the supervision of the BIFR and by virtue of the provisions of the Act. It is subject to jurisdiction of the BIFR as the implementation of the scheme is periodically being supervised by the BIFR. The provisions of this Act are, therefore, applicable to the SMDT. Not only that but as stated above when the SMDT is not liable to pay the dues of the respondent, the said award cannot be enforced against it. Mr. Koshty has relied on the decision of this Court delivered in the case of I.S.P.L. Industries Ltd. v/s. S.J. Mehta reported in 2002 (1) G.L.H. at page 93. It may be noted here that the facts of that case and the facts of tis case are not similar. In that case the enforcement of/execution of the order passed in recovery application was sought to be made against the Company, which was declared as sick industrial company and gone before the BIFR under the provisions of the Act. The liability of making the payment was not disputed nor the said Company had produced any order of the BIFR before the Labour Court and it was sought to be implemented against that very company. Unlike the facts of the said case, in the present case the liability is sought to be fastened on the SMDT which has taken over the functioning of the Company under the scheme wherein no provision has been made with regard to erstwhile company's liability which may arise by virtue of such disputes raised by the workmen/employees. It may also be noted here that the Company has become non-existent. The SMDT which is cooperative society formed by the members of the Majoor Mahajan Mandal has sponsored a scheme which has been duly sanctioned by the BIFR and by virtue of that sanction, it had started running part of the plant and machinery of the Company with the aid of 500 workers in place of 2500 workers, which were engaged by the Company when it was functioning. I have been informed that 2,000 workers have already been relieved from service by paying them all the legitimate dues including

retrenchment compensation. In that view of the matter, SMDT cannot be fastened with such liability.

9. Lastly, this brings me to the contention of Mr. Koshty to the effect that since the period of seven years is over, the protection granted under the Act cannot apply and for that purpose he placed reliance on the decision of Punjab and Hariyana High Court rendered in the case of Sukhna Paper mills Ltd. v. P.O. Industrial Tribunal, Punjab reported in 2001 LAB. I.C. at page 214. Sub-section (3) of section 22 of the Act envisages suspension of settlements, awards, etc. The proviso thereof states that the declaration specified in sub-section (3) cannot be made for a period exceeding two years which may be extended by one year at a time, however, the total period should not exceed seven years in the aggregate. In the instant case, though the respondent has made this submission, Mr. Koshty has not brought to my notice the date on which the BIFR by order made such declaration. As seen above, the scheme has come into force by virtue of order dated 5th December, 1996. This provision, therefore, will not at all help the respondent. Even otherwise also considering the facts of this case, this provision has no relevance. This is because it pertains to the declaration that may be made by the BIFR under sub-section (3) of section 22 of the Act and it envisages that operation of "all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board". A conjoint reading of sub-section (3) and (4) of section 22 of the Act will make it clear that declaration spoken of in proviso relates to contracts, settlements, awards, etc. contained in sub-section (3) and remedies for enforcement of rights or privileges etc. arising under the matters contained in sub-section (3). In the present proceedings this is not issue in dispute. The controversy in these petitions is with regard to sub-section (1) of section 22 of the Act. The aforesaid submission of Mr. Koshty therefore, cannot be accepted.

11. In view of the fact that services of about 2000 workers have been dispensed with by paying retrenchment compensation and other dues permissible in law, it is

recommended that the same benefit may be extended to the respondent of these petitions also.

12. In the circumstances, all the three petitions are allowed. The aforesaid awards of the Labour Court as well as the Industrial Court are quashed and set aside. Rule made absolute with no order as to costs.

[Akshay H. Mehta, J.]

* Pansala.